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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 05.01.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.44 of 1999

The Jawahar Mills Ltd
rep by its Authorised Agent
S.Kalidas,
S/o Somasundaram,
21.Sathappa Compound,
Harvey Road, Tiruppur

.. Appellant/Complainant

vs.

1.M/s General Diffutions
rep. by its Power Agent,
Sadasivam

2.Sadasivam .. Respondents/Accused

Prayer: This criminal appeal has been filed under Section 378 (4) of Crl P.C against the judgment, dated 06.11.1997, in C.C.No.304/1996 on the file of the Judicial Magistrate No.I, Tiruppur.

For Appellant : Mr.T.Murugamnickam

For Respondent : Mr.G.Krishnan

JUDGMENT

This appeal has been preferred against the judgment in C.C.No.304/1996 on the file of the Judicial Magistrate No.I, Tiruppur. The complainant, who has lost his case before the trial Court, is the appellant herein. The complainant has preferred the complaint under Section 200 of Cr.P.C.

2. The short facts relevant for the purpose of deciding this appeal narrated in the plaint are as follows:-

The Plaintiff by name Jawahar Mills Ltd, is having office at No.21, Sales Depot, Sathappa Compound, Harvy road, Tirupur-2. One Kalidas is the authorised representative of the plaintiff. The said Kalidas has filed the complaint on behalf of the complainant-M/s.Jawahar Mills Ltd. The first accused is M/s General Diffutions company Ltd and the second accused is the authorised representative of the first accused. As per

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invoice No.50, dated 29.06.1995, the accused owes a sum of Rs.93,896/- in connection with the purchase of yarn from the complainant-company. The second accused had issued a cheque No.347855 dated 6.7.1995 for a sum of Rs.93,896/- drawn in favour of the complainant-company. The said cheque was presented on 13.09.1995 before the Indian Oversees Bank, Tiruppur Branch, but the same was returned by the Bank stating that there was no sufficient funds in the account of the first accused-company. The complainant had represented the cheque as per the request made by the first accused on 29.09.1995 in the same Bank. But the said cheque was once again returned on 30.09.1995 stating the same reason. The complainant had issued a suit notice through his lawyer on 11.10.1995. Even after receipt of the said notice the accused have not chosen to send any reply. Hence, the plainant has preferred this complaint under Section 138 of the Negotiable Instrument Act.

3. After recording the sworn statement of the authorised representative of the complainant-company, viz. Kalidas, the learned Judicial Magistrate had taken the complaint on file and issued notice to the accused. On appearance of the accused copies under Section 207 of Cr.P.C. were furnished to the accused. When questioned the accused pleaded not guilty.

4. On the side of the complainant P.W.1 & 2 were examined and Ex.P.1 to P.10 were marked. After going through the documentary and oral evidence let in by the complainant and after considering the answers given by the accused to the questions put to him under Section 313 of Cr.P.C, in respect of the incriminating circumstances against him and after hearing the arguments on both sides, the learned trial Judge has come to a conclusion that the charge against the accused has not been proved beyond any reasonable doubt and consequently acquitted the accused under Section 255(1) of Cr.P.C. Aggrieved by the findings of the learned Judicial Magistrate the complainant has preferred this appeal.

5. Now the point for determination in this appeal is whether the charge against the accused has been proved beyond any reasonable doubt to warrant conviction under Section 138 of Negotiable Instrument Act by setting aside the findings of the learned Judicial Magistrate in C.C.No.304/1996?

6.The Point:-

6(a) The ground on which the learned Judicial Magistrate has acquitted the accused is that Thiru.Kalidas, who had preferred the complaint on behalf of the Jawahar Mills Ltd., is not the authorised person to prefer the complaint on behalf of the Jawahar Mills Ltd. To arrive at the said conclusion the learned Judicial Magistrate has relied on the evidence of P.W.1 himself. In the cross-examination P.W.1 viz. Kalidas, the alleged authorised representative of the Jawahar Mills Ltd, would depose that the Directors of the Jawahar Mills Ltd are Palniyappan and Ramanathan. But Ex.P.9-authorisation letter was signed by one Vivekananthan, the Managing Director, the son of one of the Directors,

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viz. Palaniyyappan. The complainant has not even chosen to examine the said Vivekananthan to show that he is the Managing Director of the company empowered to authorise Kalidas to file the complaint on behalf of the Jawahar Mills Ltd. In the cross-examination P.W.1-Kalidas would depose that before giving authorisation to a person to file a complaint on behalf of the Jawahar Mills Ltd, both the Directors used to convene a meeting and then will take a decision as to any authorisation can be given to a particular person. But in this case to his knowledge there was no meeting convened between the Directors to take a decision in respect of authorising Kalidas to file the complaint on behalf of the Jawahar Mills Ltd. The complainant atleast would have examined any one of the directors to show that they have authorised Vivekananthan to issue authorisation letter Ex.P.9 in favour of Kalidas.

6(b) The learned Judicial Magistrate relying on 1994(1) LW (Crl) 337 and also the ratio in 1997(1) LW 297 (Sagayadurai & others Vs. J.D.Electronics) has come to a conclusion that Kalidas is not the authorised agent of the Jawahar Mills Ltd., to file the complaint on behalf of the said mill.

6(c) The learned counsel appearing for the appellant relying on the same decision in 1997(1) LW 297 relied on by the accused and contended that any person authorised by the Company is competent to file the complaint. But a careful reading of the observation given by the learned Judge in the above said ratio will clearly go to show that the manager, partner, managing partner or director of any other person authorised by the company alone is competent to file the complaint on behalf of the company. The relevant observation in the said statute runs as follows:-

> "5.The definition of the company under the Negotiable Instruments Act indicates any Body Corporate including a firm indicates that the company as such has to be represented by some human agency in preferring a complaint before the Court. The company, though it is a legal entity, does not have soul, mind, body and limbs to walk to the court for preference of a complaint. The dictates of commonsense, practical wisdom, prudence and expedience impels the Court in such a situation to allow the company to present a complaint before the Court represented by some person connected with the affairs of the company. The person connected with the affairs of the firm, the company, in the normal run of things may be either its manager, partner, managing partner or director or any other person authorised by the company."

No doubt a person authorised by the company is competent to file a complaint on behalf of the company. But in this case, Thiru.Kalidas, who has preferred the complaint on behalf of the Jawahar Mills Ltd., has miserably failed to prove that he has been authorised to file the complaint on behalf of the Jawahar Mills Ltd.

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6(d) It is pertinent to note that in this case on the first day of presentation of the complaint viz. 27.11.1995, before the Court Ex.P.9-authorisation letter was not produced by Kalidas and on that score the complaint was returned and only on the date of second representation i.e., on 25.06.1997, Ex.P.9-authorisation letter was filed by Thiru.Kalidas. The evidence of Kalidas as P.W.1 itself cuts at the root of his case that he is the authorised agent of the Jawahar Mills Ltd. Under such circumstances, I do not find any reason to interfere with the well considered judgment of the learned Judicial Magistrate No.I, Tiruppur, in C.C.No.304/1996, which does not suffer from any illegality or infirmity to warrant any interference from this Court. Point is answered accordingly.

7. In fine, the appeal is dismissed, confirming the judgment in C.C.No.304/1996 on the file of the Judicial Magistrate No.I, Tiruppur.

ssv

Sd/-
Assistant Registrar

/true copy/

Sub Assistant Registrar.

To,

1.The Judicial Magistrate, Tiruppur.
2.-do- thro the chief judicial Magistrate, Coimbatore.
+ One cc to Mr. T. Murugamanickam Advocate sR 1404.
GM (co)
sg 11/01/07

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